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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

State of Arizona, ex rel. Kristin K. Mayes,
Attorney General; et al.

Plaintiffs,

v.

Michael D. Lansky, L.L.C., dba Avid
Telecom, et al.,

Defendants.

NO. CV-23-00233-TUC-CKJ

**PARTIES' JOINT RULE 26(f)
REPORT AND PROPOSED
DISCOVERY PLAN**

Pursuant to Federal Rule of Civil Procedure 26(f), Local Civil Rules 16 and 26(f), and this Court's July 8, 2024 Order (Dkt #73), counsel for the parties conferred on July 25, 2024, and submit the following report of their meeting for the Court's consideration.

All parties and their counsel are listed in the table below. The Lead Plaintiff States in this matter are counsel for the Plaintiff States of Arizona, Indiana, North Carolina, and Ohio. During the meet-and-confer with Defendants on July 25, 2024, and for all appearances before the Court and exchanges with Defendants concerning this litigation, the Lead Plaintiff States represent the position of all Plaintiff States. The names of counsel who attended the July 25, 2024, meet-and-confer are preceded by an asterisk (*). The Lead Plaintiff States and Defendants met again on August 15, 2024.

Party Name	Party Counsel
Plaintiff State of Arizona	*Alyse Meislik *Dylan Jones
Plaintiff State of Indiana	*Douglas S. Swetnam
Plaintiff State of North Carolina	*Tracy Nayer *Asa C. Edwards IV *Danielle Wilburn Allen
Plaintiff State of Ohio	*Erin B. Leahy
Plaintiff State of Alabama	*Lindsay D. Barton Robert D. Tambling
Plaintiff State of Arkansas	*Amanda Wentz
Plaintiff People of the State of California	Nicklas A. Akers Bernard A. Eskandari *Timothy D. Lundgren *Rosailda Perez Michelle Burkart

Party Name	Party Counsel
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Plaintiff State of Connecticut	*Brendan T. Flynn
Plaintiff State of Delaware	Ryan Costa
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Plaintiff Ashley Moody, Attorney General of the State of Florida	*Patrick Crotty Miles Vaughn
Plaintiff State of Georgia	*David A. Zisook
Plaintiff State of Hawaii	Christopher J.I. Leong
Plaintiff State of Idaho	James J. Simeri (<i>Pro Hac Vice motion forthcoming</i>)
Plaintiff People of the State of Illinois	*Philip Heimlich Elizabeth Blackston
Plaintiff State of Iowa	*Benjamin Bellus William Pearson
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Party Name	Party Counsel
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Plaintiff State of Minnesota, by its Attorney General, Keith Ellison	*Bennett Hartz
Plaintiff Lynn Fitch, Attorney General State of Mississippi	James M. Rankin *Jessica D. Jasper (<i>Pro Hac Vice motion forthcoming</i>)
Plaintiff State of Missouri, ex. rel. Andrew Bailey, Attorney General	Michael Schwalbert
Plaintiff State of Montana	Anna Schneider *Andrew Butler
Plaintiff State of Nebraska	*Gary E. Brollier
Plaintiff State of Nevada	*Michelle C. Badorine
Plaintiff State of New Hampshire	Mary F. Stewart
Plaintiff State of New Jersey	*Deepta Janardhan Jeffrey Koziar
Plaintiff Raúl Torrez, New Mexico Attorney General	Julie Ann Meade
Plaintiff Office of the Attorney General of the State of New York	Glenna Goldis
Plaintiff State of North Dakota	Elin S. Alm *Christopher Glenn Lindblad
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Plaintiff State of Oregon	*Jordan M. Roberts

Party Name	Party Counsel
Plaintiff Commonwealth of Pennsylvania by Attorney General Michelle A. Henry	Mark W Wolfe
Plaintiff State of Rhode Island, by Attorney General Peter Neronha	Stephen N. Provazza
Plaintiff State of South Carolina	*Kristin Simons *Danielle Robertson
Plaintiff State of Tennessee	Austin C. Ostiguy Tyler T. Corcoran
Plaintiff State of Texas	*David Shatto
Plaintiff Utah Division of Consumer Protection	*Kevin McLean
Plaintiff State of Vermont	Jill Abrams (<i>Pro Hac Vice motion forthcoming</i>)
Plaintiff Commonwealth of Virginia, ex rel. Jason S. Miyares, Attorney General	*Geoffrey L. Ward
Plaintiff State of Washington	*Alexandra Kory Mina Shahin
Plaintiff State of West Virginia ex rel. Patrick Morrissey, Attorney General	*Ashley T. Wentz
Plaintiff State of Wisconsin	*Gregory A. Myszkowski
Plaintiff State of Wyoming	Benjamin M. Peterson
Defendants Michael D. Lansky, L.L.C., dba Avid Telecom, Michael D. Lansky and Stacey Reeves	*Neil S. Ende

Party Name	Party Counsel
Defendants Michael D. Lansky, L.L.C., dba Avid Telecom, Michael D. Lansky and Stacey Reeves	*Greg Taylor (<i>Pro Hac Vice motion forthcoming</i>)

1. Nature of the Case and Bases of Claims and Defenses

Plaintiffs filed this action against Michael D. Lansky, L.L.C., dba Avid Telecom (Defendant Avid Telecom), Michael D. Lansky, individually and as Chief Executive Officer (Defendant Lansky),¹ and Stacey Reeves, individually and as Vice President of Operations and Sales, (collectively “Defendants”) pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. § 6101 *et seq.*; the Telemarketing Sales Rule (“TSR”), 16 C.F.R. § 310 *et seq.*; the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*; the Truth in Caller ID Act (“TCIA”), 47 U.S.C. § 227(e); and certain state laws that protect consumers against unfair and deceptive trade practices, including unfair, deceptive, abusive and illegal telemarketing practices.

The Plaintiffs’ Complaint alleges that Defendants Avid Telecom, Lansky and Reeves are in the business of providing Voice over Internet Protocol (“VoIP”) services, facilitating or initiating robocalls, and/or helping others make robocalls.² As a VoIP

¹ The Alter Ego claims against Defendant Lansky were dismissed by Order of Court [Dkt. 72] issued on July 8, 2024.

² In addition to the generic description of its disputes below, Defendant Avid Telecom specifically objects to and disputes the allegation that the company facilitates, initiates or helps others make robocalls. Defendants Lansky and Reeves object to and dispute that, on an individual basis, they are in any business, including the business of providing VoIP services, facilitating or initiating robocalls, and/or helping others make robocalls. Defendant Reeves also individually objects to and disputes this allegation because her role was solely that of an independent contractor with no ownership or control over Avid Telecom’s business or operations and thus, in her individual capacity, she is not a provider of VoIP services.

1 provider, Avid Telecom uses broadband internet technology to route its customers' calls
2 into, and throughout the U.S. telecommunications network.³ According to Avid Telecom's
3 filings with the Federal Communications Commission ("FCC"), Defendants provide VoIP
4 services in all U.S. states and territories.⁴ As a result of the following activities, Plaintiffs
5 seek relief in the form of temporary and permanent injunctions, damages, restitution and
6 other compensation on behalf of residents of the States bringing this action, civil penalties,
7 attorney's fees and costs, relief under the individual state claims, and such other legal or
8 equitable relief as the Court deems just and proper, including a forfeiture of the right for
9 Defendants to conduct business.

10 Defendants believe that the allegations in the complaint are not sustainable as a
11 matter of fact or law and that certain of the "evidence" presented may have been obtained
12 through Improper and/or illegal means. Defendants reserve all rights to pursue relief on
13 these bases.

14
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16 ³ In addition to the generic description of its disputes below, Defendant Avid Telecom
17 specifically objects to and disputes Avid Telecom objects to and disputes the allegation
18 that it uses broadband internet technology to route its customers' calls into, and throughout
19 the U.S. telecommunications network. Defendant Reeves also individually objects to and
20 disputes this allegation because her role was solely that of an independent contractor with
21 no ownership or control over Avid Telecom's business or operations and thus, in her
22 individual capacity, she does not and is not responsible for any use of broadband internet
23 technology to route its customers' calls into, and throughout the U.S. telecommunications
24 network.

25 ⁴ In addition to the generic description of its disputes below, Defendant Avid Telecom
26 specifically objects to and disputes the allegation that its filings with the Federal
27 Communications Commission ("FCC"), are properly read to mean that Defendants provide
28 VoIP services in all U.S. states and territories. Defendant Reeves also individually objects
to and disputes this allegation because her role was solely that of an independent contractor
with no ownership or control over Avid Telecom's business or operations and thus, in her
individual capacity, she had no responsibility for any decision by Avid Telecom allegedly
to provide throughout the U.S. telecommunications network.

Count I

Violations of the Telemarketing Sales Rule, 16 C.F.R. §§310.3-310.4

The TSR prohibits abusive and deceptive acts or practices by “sellers” or “telemarketers” and prohibits persons from providing substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates the TSR. Defendants deny that they are properly considered to be a “seller” or a “telemarketer” under the TSR.

Illegal robocalls that Defendants transmitted onto and across Avid Telecom’s network constitute telemarketing and were created and initiated by sellers and/or telemarketers within the scope of the TSR.⁵ Defendants violated the TSR by providing substantial assistance or support to sellers and telemarketers that were violating the TSR by providing services, including but not limited to retail or wholesale voice termination; dialing software, including the use of a predictive dialer; helping customers with rotating telephone numbers; telephone number assignment; providing leads for customers to call; and providing expertise, whether formal or informal, directly or indirectly, to one or more sellers and/or telemarketers engaged in telemarketing as defined by the TSR.⁶

⁵ In addition to the generic description of its disputes below, Defendant Avid Telecom specifically objects to and disputes the allegation that they “transmitted” any calls onto and across Avid Telecom’s network. Defendant Reeves also individually objects to and disputes this allegation because, in her limited role as an independent contractor with no ownership or right of control, she has any legal responsibility for any calls transmitted by Avid Telecom.

⁶ In addition to the generic description of its disputes below, Defendant Avid Telecom specifically objects to and disputes that they provided substantial assistance or support to sellers and telemarketers that were violating the TSR by providing services, including but not limited to retail or wholesale voice termination; dialing software, including the use of a predictive dialer; helping customers with rotating telephone numbers; telephone number assignment; providing leads for customers to call; and providing expertise, whether formal or informal, directly or indirectly, to one or more sellers and/or telemarketers engaged in telemarketing as defined by the TSR. Defendants further deny, as a matter of fact, that they provided dialing software, including the use of a predictive dialer; helping customers

Count II

Failure to Exercise Due Diligence/Know Your Customer in Violation of the TCPA,
47 U.S.C. § 227 and 47 C.F.R. § 64.1200(n)(3)

To target and eliminate unlawful robocalls, the FCC requires all originating voice service providers (“VSPs”)⁷ to know their customers and exercise due diligence in ensuring that their services are not used to originate illegal traffic and further recommends that VSPs exercise caution in granting access to high-volume origination services to ensure that bad actors do not abuse such services.⁸ Pursuant to the TCPA, the FCC has authorized and encouraged VSPs to block calls in certain circumstances.⁹ VSPs may block calls so that

with rotating telephone numbers; telephone number assignment; providing leads for customers to call; and providing expertise, whether formal or informal, directly or indirectly, to one or more sellers and/or telemarketers engaged in telemarketing as defined by the TSR. Defendant Reeves also individually objects to and disputes this allegation because, in her limited role as an independent contractor with no ownership or right of control, she has any legal responsibility for any of the alleged acts.

⁷ An “originating” VSP is the first VSP in the call flow from the calling party’s side of the call. In addition to the generic description of its disputes below, Defendant Avid Telecom specifically objects to and disputes this definition as materially incorrect and misleading to the extent that it is meant to suggest that Avid Telecom is the originator of the call or that it has any relationship with the underlying customer.

⁸ In addition to the generic description of its disputes below, Defendant Avid Telecom specifically objects to and disputes this allegation to the extent that the Know Your Customer rules are being retroactively, prior to the effective date of the FCC rule. Defendant Reeves also individually objects to and disputes this allegation because, in her limited role as an independent contractor with no ownership or right of control, she has any legal responsibility for Avid telecom’s decisions regarding the application of the Know Your Customer Rules.

⁹ In addition to the generic description of its disputes below, Defendant Avid Telecom specifically objects to and disputes this allegation to the extent that it suggests that Avid Telecom had the right to block all calls, including the right to block calls, prior to the effective date of the FCC rule allowing call blocking. Defendant Reeves also individually objects to and disputes this allegation because, in her limited role as an independent contractor with no ownership or right of control, she has any legal responsibility for Avid Telecom’s decision whether to block calls.

1 they do not reach a called party when the calls originate from invalid numbers, unallocated
2 numbers, unused numbers and numbers associated with inbound-only services, that is, the
3 entity to whom the number is assigned does not use it for outbound calling.¹⁰ The TCPA
4 also requires VSPs to take affirmative, effective measures to prevent new and renewing
5 customers from using their networks to originate illegal calls, including knowing their
6 customers and exercising due diligence in ensuring that their services are not used to
7 originate illegal traffic.¹¹

8 Here, Defendants violated the TCPA by not choosing to regularly, if at all, block
9 calls made from telephone numbers that the FCC gave permission to block.¹² Defendants
10 also failed to take affirmative, effective measures to prevent new and renewing customers
11 from using their network to originate illegal calls, including knowing their customers and
12 exercising due diligence in ensuring that their services are not used to originate illegal
13 traffic.¹³

14 ¹⁰ See previous footnote.

15 ¹¹ In addition to the generic description of its disputes below, Defendant Avid Telecom
16 specifically objects to and disputes the allegation that the TCPA contains any language that
17 prevents “new and renewing customers from using their networks to originate illegal calls”.
18 Defendant Reeves also individually objects to and disputes this allegation because, in her
19 limited role as an independent contractor with no ownership or right of control, she has any
20 legal responsibility for Avid Telecom’s decisions regarding the application of the TCPA
21 and Know Your Customer Rules.

22 ¹² In addition to the generic description of its disputes below, Defendant Avid Telecom
23 specifically objects to, and disputes Defendants deny that Avid Telecom chose not to
24 “regularly, if at all” block calls made from telephone numbers that the FCC gave
25 permission to block. Among other things, as the Plaintiffs are aware, Avid Telecom
26 blocked in excess of 2.3 calls in 2023 alone. Defendant Reeves also individually objects
27 to and disputes this allegation because, in her limited role as an independent contractor
28 with no ownership or right of control, she has any legal responsibility for Avid Telecom’s
29 decisions call blocking.

30 ¹³ In addition to the generic description of its disputes below, Defendant Avid Telecom
31 specifically objects to and disputes that they failed to take affirmative, effective measures
32 to prevent new and renewing customers from using their network to originate illegal calls,

Count III

Robocalls to Cellular and Residential Telephone Lines in Violation of the TCPA,
47 U.S.C. §§ 227(b)(1)(A)(iii) and (b)(1)(B)

Congress enacted the TCPA because it determined that unwanted prerecorded voice messages were a greater nuisance and invasion of privacy than live calls and that unwanted calls delivered to cellular phones could be costly. The TCPA thus prohibits any person from making calls using an automatic telephone dialing system or an artificial or prerecorded voice to any cellular telephone with a U.S.-based telephone number, with exceptions for emergency calls or those made with the prior express consent of the called party. The TCPA also prohibits any person from initiating any telephone call to any residential telephone line with a U.S. number using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless it is an emergency call or subject to other exemptions.¹⁴

In this matter, Defendants violated the TCPA by engaging in a pattern or practice of initiating telephone calls to residential and cellular telephone lines using artificial or

including knowing their customers and exercising due diligence in ensuring that their services are not used to originate illegal traffic. Defendant Avid Telecom operated under a fully compliant Know Your Customer plan on file with the Federal Communications commission and it acted aggressively, including rejecting large numbers of customer prospects and terminating other customers who delivered suspicious traffic, to ensure that its services were only used for lawful purposes. Defendant Reeves also individually objects to and disputes this allegation because, in her limited role as an independent contractor with no ownership or right of control, she has any legal responsibility for Avid Telecom's decisions regarding the prevention of new and renewing customers from using their network to originate illegal calls.

¹⁴ In addition to the generic description of its disputes below, Defendant Avid Telecom specifically objects to and disputes the allegation that they made, initiated or caused the initiation any telephone call in violation of the TCPA. Defendant Reeves also individually objects to and disputes this allegation because, in her limited role as an independent contractor with no ownership or right of control, she has any legal responsibility for Avid Telecom's decisions regarding the application of the TCPA.

1 prerecorded voices to deliver messages without the prior express consent of the called
 2 parties. The Defendants also wrongfully engaged in a pattern or practice of initiating or
 3 causing the initiation of telephone calls that included or introduced advertisements or
 4 constituted telemarketing to cellular telephone lines using artificial or prerecorded voices
 5 to deliver messages without the prior express written consent of the called parties.
 6 Defendants' wrongful conduct harmed consumers in each of the Plaintiffs' jurisdictions.
 7 The calls would not have connected but for Defendants' decision to allow them to transit
 8 their network despite having knowledge that many of the calls were delivering prerecorded
 9 or artificially voiced messages. Defendants knew or consciously avoided knowing that
 10 many of the calls violated the TCPA.¹⁵

11 Count IV

12 Calls to Telephone Numbers on the National Do Not Call ("DNC") Registry in Violation 13 of the TCPA, 47 U.S.C. § 227(c) and 47 C.F.R. § 64.1200(c)(2)

14 The TCPA recognized that there is a need to protect residential telephone
 15 subscribers' privacy rights to avoid receiving telephone solicitations to which they object.
 16 In order to meet this directive, a single national database of telephone numbers was
 17 compiled of residential subscribers who objected to receiving telephone solicitations.
 18 Under the TCPA, all persons or entities are prohibited from initiating any telephone

19
 20 ¹⁵ In addition to the generic description of its disputes below, Defendant Avid Telecom
 21 specifically objects to and disputes the allegation that they allowed any third party to transit
 22 their network despite having knowledge that many of the calls were delivering prerecorded
 23 or artificially voiced messages. Defendants also object to and dispute this allegation to the
 24 extent that it implies that every call containing a pre-recorded message is illegal. Thus, to
 25 the extent that the complaint does not even attempt to identify which of the referenced calls
 26 were subject to the recipient's prior consent, the complaint does not establish that Avid
 27 Telecom ever transited illegal robocalls and it certainly does not establish that Defendants
 28 "knew or consciously avoided knowing" that any of the calls violated the TCPA. Defendant
 Reeves also individually objects to and disputes this allegation because, in her limited role
 as an independent contractor with no ownership or right of control, she has any legal
 responsibility for Avid Telecom's decisions regarding the application of the TCPA.

1 solicitation to a residential telephone subscriber who has registered their telephone number
 2 on the National DNC Registry, which registrations must be honored indefinitely, or until
 3 the registration is cancelled by the subscriber.

4 Defendants violated the TCPA by engaging in a pattern or practice of initiating
 5 telephone solicitations to residential subscribers in the Plaintiffs' jurisdictions who have
 6 registered their telephone numbers on the National DNC Registry. Defendants knew or
 7 consciously avoided knowing that it transmitted calls to residential subscribers on the
 8 National DNC Registry.¹⁶

9 Count V

10 Violations of the Truth in Caller ID Act, 47 U.S.C. § 227(e)

11 Section (e) of 47 U.S.C. § 227 known as the Truth in Caller ID Act prohibits any
 12 person with the intent to defraud, cause harm or otherwise obtain anything of value from
 13 knowingly causing, directly or indirectly, any caller identification service to transmit
 14 misleading or inaccurate caller identification information in connection with any voice or
 15 text messaging service.

16 Defendants violated the Truth in Caller ID Act by knowingly causing the caller
 17 identification services of the recipients of their call traffic with spoofed¹⁷ phone numbers

18 ¹⁶ In addition to the generic description of its disputes below, Defendant Avid Telecom
 19 specifically objects to and disputes the allegation that they initiated an telephone calls, let
 20 alone that they initiated telephone solicitations to residential subscribers in the Plaintiffs'
 21 jurisdictions who have registered their telephone numbers on the National DNC Registry
 22 or that they knew or consciously avoided knowing that they transmitted calls to residential
 23 subscribers on the National DNC Registry. In addition, Avid Telecom will establish that
 24 many of the telephone numbers on the DNC Registry—which is limited to residential
 25 numbers—are actually owned or controlled by business entities who work with the
 26 Industry Traceback Group. Calls to those numbers do not violate DNC regulations.
 Defendant Reeves also individually objects to and disputes this allegation because, in her
 limited role as an independent contractor with no ownership or right of control, she has any
 legal responsibility for Avid Telecom's decisions regarding the compliance with the
 requirements of the DNC Registry.

27 ¹⁷ The practice of "spoofing" is used deceptively by scammers to manipulate the caller
 28

1 to transmit misleading or inaccurate caller identification information.¹⁸ Defendants knew
 2 or consciously avoided knowing that they accepted and profited from illegal robocalls with
 3 misleading or inaccurate spoofed phone numbers, which sought to defraud, cause harm, or
 4 wrongfully obtain things of value from the call recipients.¹⁹

5 Counts VI – XXIII

6 State Claims alleging unfair and deceptive trade practices, including unfair, deceptive,
 7 abusive and illegal telemarketing practices.

8 *See* Exhibit A: Plaintiffs’ List of Counts and Elements of Proof.

9 **2. Elements of Proof**

10 *See* Exhibit A: Plaintiffs’ List of Counts and Elements of Proof.

11 *See* Exhibit B: Defendants’ Elements of Proof for Affirmative Defenses.

12 **3. Facts and Legal Issues in Dispute**

13 As a threshold matter, Plaintiffs note that their best reading of Defendants’ Answer
 14 to the Complaint indicates two types of “disputes.” The first type concerns claims that the
 15 Defendants are not able to admit or deny certain averments because certain terms or phrases
 16 have not been defined with enough specificity.

17 The second type consists of genuine disputes as to fact and/or law. The parties are
 18 of the position that all averments of fact and law, unless admitted to in the Answer, remain
 19 in dispute. Although the parties are not in complete agreement regarding relevance and
 20

21 identification system so that it appears that their calls are from legitimate phone numbers.

22 ¹⁸ In addition to the generic description of its disputes below, Defendants objects to and
 23 disputes the allegation that they knowingly caused or consciously avoided knowing the
 24 caller identification services of the recipients of their call traffic with spoofed phone
 25 numbers to transmit misleading or inaccurate caller identification information. Defendant
 26 Reeves also individually objects to and disputes this allegation because, in her limited role
 27 as an independent contractor with no ownership or right of control, she has any legal
 28 responsibility for Avid Telecom’s decisions regarding the application of the FCC’s
 spoofing rules.

¹⁹ *See* footnote 18.

1 materiality on all matters, these disputes have been set forth in general terms below. Where
2 necessary, Plaintiffs' and Defendants' respective positions have been set out separately.
3 To this point, the parties have been unable to narrow the following disputes by stipulation
4 or motion.

5 Defendants object to and dispute Plaintiffs' characterization of Defendants'
6 disputes. The language of the Answer, as supplemented herein, speaks for itself.

7 Disputes of Fact and/or Law

8 A. The nature of the trade or commerce in which Defendants engaged,
9 including:

10 i. The products and/or services which Defendants provided
11 and/or advertised to their customers and the extent to which
12 Defendants were involved or provided assistance to their customers
13 in the use of such products and/or services; and

14 ii. Whether Defendants engaged in trade or commerce in each
15 Plaintiff's respective jurisdictions at all relevant times.

16 B. Disputes concerning the individual liability of Defendants Lansky
17 and/or Reeves, including:

18 i. The scope of Defendant Lansky's authority over and
19 participation in the acts or practices of Avid Telecom alleged in the
20 Complaint.

21 ii. The scope of Defendant Reeves' authority over and
22 participation in the acts or practices of Avid Telecom alleged in the
23 Complaint.

24 iii. The existence and scope of Defendant Reeves' authority over
25 the acts or practices of Avid Telecom alleged in the Complaint.

26 iv. Whether Defendant Reeves was an employee or independent
27 contractor of Defendant Avid Telecom.
28

1 v. Whether Defendant Reeves was an agent of Defendant Avid
2 Telecom.²⁰

3 vi. Whether an independent contractor can be held liable for the
4 acts of the principal party.

5 vii. Whether an independent contractor can be held liable under the
6 TCPA for the acts of the principal party.

7 C. Whether the Defendants knew or were consciously avoiding knowing
8 that they were providing substantial assistance or support to sellers or telemarketers
9 that were engaged in telemarketing while Defendants knew or were consciously
10 avoiding knowing that the seller or telemarketer was engaged in acts or practices
11 that violated TSR sections 310.3(a), (c) or (d), or 310.4.

12 D. Whether the Defendants complied with their obligation under
13 47 C.F.R. § 64.1200(n)(3) to take affirmative, effective measures to prevent new
14 and renewing customers from using the network to originate illegal calls, including
15 knowing its customers and exercising due diligence in ensuring that its services are
16 not used to originate illegal traffic.

17 E. Whether the Federal Communications Commission has determined
18 that Avid Telecom ever transited illegal calls.²¹

19 F. Whether the Federal Communications Commission delegated the
20 authority to determine a call's legality to the Industry Traceback Group.²²

21
22 ²⁰ Defendants dispute that the issue of Ms. Reeves status as an “agent” of Avid
23 Telecom—as opposed to an employee or independent contractor—is before the Court as it
was not pled as such by Plaintiffs in the complaint.

24 ²¹ Plaintiffs did not object to the inclusion of this dispute but do not believe that an FCC
25 determination that Avid Telecom ever transited illegal calls is necessary to the ultimate
26 determination of liability in this action.

27 ²² Plaintiffs did not object to the inclusion of this dispute but do not believe that whether
28 or not the FCC delegated authority to the Industry Traceback Group to determine a call's

1 G. Whether the issuance of a traceback by the Industry Traceback Group
2 constitutes evidence that the subject call is illegal.

3 H. Whether the content of the traceback notices and related
4 communications sent by the Industry Traceback Group constitute sufficient
5 evidence to provide knowledge of the transmission of illegal robocalls.²³

6 I. Whether complaints, notices, and related communications about call
7 traffic from sources other than the Industry Traceback Group constitute sufficient
8 evidence to provide knowledge of the transmission of illegal robocalls.²⁴

9 J. Whether the FCC lawfully delegated authority to the Industry
10 Traceback Group—which is comprised of companies that compete directly with
11 Avid Telecom—as the neutral third party. If not, whether the Industry Traceback
12 Group’s issuance of tracebacks to Avid Telecom and other actions are invalid or
13 unlawful.²⁵

14
15
16 _____
16 legality is necessary to the ultimate determination of liability in this action.

17 ²³ It is Defendants’ position that the issuance of a traceback is nothing more than a
18 request to determine the end-to-end call path, and it is not a finding that a call was illegal.
19 Thus, Defendants do not believe that the content of traceback notices and related
20 communications sent by the Industry Traceback Group constitute sufficient evidence to
21 provide knowledge of the transmission of illegal robocalls.

22 ²⁴ It is Defendants’ position that all such complaints, notices, and related
23 communications came after the call was transited—thus making it impossible for
24 Defendants to know or prevent that call in real time. Thus, Defendants do not believe that
25 complaints, notices, and related communications about call traffic from sources other than
26 the Industry Traceback Group constitute sufficient evidence to provide knowledge of the
27 transmission of illegal robocalls.

28 ²⁵ Plaintiffs did not object to the inclusion of this dispute but because Plaintiffs’
Complaint does not solely rely on tracebacks from the Industry Traceback Group to
establish Defendants’ violative conduct, Plaintiffs do not believe this dispute to be
determinative of liability in this action.

1 K. Whether the Industry Traceback Group issued tracebacks in a lawful
2 and non-discriminatory manner.²⁶

3 L. Whether the TCPA sets forth a standard for the number of tracebacks
4 that are sufficient to put a carrier on notice that it is transiting illegal robocalls and,
5 if so, the precise number of tracebacks required to establish that knowledge.²⁷

6 M. Whether the TCPA sets forth a percentage of a carrier's total calls that
7 that are associated with a traceback that is sufficient to put a carrier on notice that it
8 is transiting illegal calls and, if so, the precise percentage of calls required to
9 establish that knowledge.²⁸

10 N. Whether the FCC has implemented a regulation(s) that set(s) forth a
11 standard for the number of tracebacks that are sufficient to put a carrier on notice
12 that it is transiting illegal robocalls and, if so, the precise number of tracebacks
13 required to establish that knowledge.²⁹

14 O. Whether the FCC has implemented a regulation that sets forth a
15 percentage of a carrier's total calls that that are associated with a traceback that is

16 ²⁶ Plaintiffs did not object to the inclusion of this dispute but because Plaintiffs'
17 Complaint does not solely rely on tracebacks from the Industry Traceback Group to
18 establish Defendants' violative conduct, Plaintiffs do not believe this dispute to be
determinative of liability in this action.

19 ²⁷ Plaintiffs do not dispute that the TCPA does not set forth a precise number of
20 tracebacks required to establish knowledge that a provider is transiting illegal robocalls but
21 Plaintiffs do not believe Defendants' characterization of this dispute to be determinative of
liability in this action.

22 ²⁸ Plaintiffs do not dispute that the TCPA does not set forth a specific percentage of
23 calls associated with tracebacks that would be sufficient to establish knowledge that a
24 provider is transiting illegal robocalls. but Plaintiffs do not believe Defendants'
characterization of this dispute to be determinative of liability in this action.

25 ²⁹ Plaintiffs do not dispute that the FCC Regs do not set forth a precise number of
26 tracebacks required to establish knowledge that a provider is transiting illegal robocalls but
27 Plaintiffs do not believe Defendants' characterization of this dispute to be determinative of
liability in this action.

1 sufficient to put a carrier on notice that it is transiting illegal calls and, if so, the
2 precise percentage of calls required to establish that knowledge.³⁰

3 P. Whether Avid Telecom provided transmission facilities for the
4 carriage of interstate traffic.

5 Q. Whether Avid Telecom's transmission facilities carried illegal traffic.

6 R. Whether Avid Telecom initiated any of the calls alleged to be illegal.

7 S. Whether any evidence presented by the Plaintiffs was obtained
8 through illegal means, including but not limited to:

- 9 i. illegal recording of voice calls without proper consent;
10 ii. improper association of business telephone numbers with the Do
11 Not Call list;
12 iii. improper or illegal scraping of consumer voice mail data; and/or
13 iv. issuance of subpoenas prior to or following the filing of the
14 complaint without notice to Defendants.

15 T. Whether evidence referenced in the Complaint was obtained through
16 means that were or are illegal or improper in one or more states that would
17 necessitate the preclusion of any use of that evidence.

18 U. Whether one or more of the Plaintiffs who participated in the filing of
19 the Complaint against Defendants knew or should have known that evidence
20 referenced in that Complaint may have been gathered illegally and/or in violation
21 of the Federal Rules of Civil Procedure.

22 V. Whether evidence that was obtained through illegal means is
23 admissible.

24
25
26 ³⁰ Plaintiffs do not dispute that the FCC Regs do not set forth a specific percentage of
27 calls traced back that would be sufficient to establish knowledge that a provider is transiting
28 illegal robocalls. but Plaintiffs do not believe Defendants' characterization of this dispute
to be determinative of liability in this action.

1 W. Whether any rules, regulations and/or laws governing the
2 transmission of calls are being applied in a retroactive, *ex post facto*, manner.

3 X. Whether Defendants had knowledge of the illegal use of their
4 transmission facilities and failed to take steps to prevent that illegal use within the
5 scope of *In the Matter of Rules & Reguls. Implementing the Tel. Consumer Prot.*
6 *Act of 1991*, 7 F.C.C. Rcd. 8752, ¶54 (1992).

7 Y. Whether the Tel. Consumer Prot. Act of 1991, 7 F.C.C. Rcd. 8752,
8 ¶54 (1992), applies to the conduct of Defendant Lansky in his individual capacity.

9 Z. Whether the Tel. Consumer Prot. Act of 1991, 7 F.C.C. Rcd. 8752,
10 ¶54 (1992), applies to the conduct of Defendant Reeves in her individual capacity.

11 AA. Whether Defendants were sufficiently involved in making or
12 initiating illegal calls within the scope of *Rules & Regs. Implementing the Tel.*
13 *Consumer Prot. Act of 1991*, 30 FCC Red. 7961, 7890 (2015).

14 BB. Whether the Attorneys General of the Plaintiffs have the authority to
15 participate in the Complaint under applicable state and federal laws and/or
16 regulations.

17 CC. Whether Defendant Lansky is individually liable for the conduct
18 alleged in the Complaint.

19 DD. Whether Defendant Reeves is individually liable for the conduct
20 alleged in the Complaint.

21 EE. Whether each of the statutory and/or regulatory provisions, both
22 Federal and State, as set forth in Counts I through XXIII in the Complaint are
23 applicable to each Defendant.

24 FF. Whether Avid Telecom has telecommunications facilities in any
25 Plaintiff state.³¹

26
27 ³¹ Plaintiffs did not object to the inclusion of this dispute but do not believe that a
28 physical location of telecommunications facilities in any Plaintiff State is necessary to the

1 GG. Whether any call has been terminated by Avid Telecom in any
 2 Plaintiff state.³²

3 HH. Whether, pursuant to the Defendants' alleged legal violations,
 4 Plaintiffs are entitled to the relief set forth in the Prayer for Relief in the Complaint.

5 II. Whether there is the absence of any factual or legal basis for the
 6 allegation(s) in the Complaint and relief sought in the Complaint's Prayer for Relief
 7 to warrant the reimbursement of Defendants' attorneys' fees and costs and/or other
 8 relief.

9 4. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C.
 10 §§ 1331, 1337(a), 1355, and has pendent jurisdiction over the state law claims pursuant to
 11 28 U.S.C. § 1367. The Arizona District Court is the appropriate venue.

12 5. All parties have been served and have filed an answer.

13 6. All named parties are subject to the Court's jurisdiction.

14 7. Plaintiffs and Defendants anticipate bringing one or more motions on issues
 15 that may be resolved in whole or in part pre-trial. The parties intend to bring summary
 16 judgment motions on claims which can be disposed of prior to trial.

17 8. The parties do not consent to assignment of the case to a Magistrate Judge.
 18 Further, the case is not suitable for reference to arbitration or to a special master.

19 9. There are no pending related cases in this Court that allege any claims similar
 20 to this matter. However, on December 14, 2022, Defendants Lansky and Avid Telecom
 21 filed a complaint in this Court against a third-party alleging claims that included
 22 defamation as to Defendant Avid Telecom and false light invasion of privacy as to
 23

24 _____
 25 ultimate determination of liability in this action.

26 ³² Plaintiffs did not object to the inclusion of this dispute but because Plaintiffs'
 27 Complaint does not allege that Defendant Avid Telecom acted as the terminating provider
 28 (i.e., the call recipient's telecom provider) for any of the alleged violative calls, Plaintiffs
 do not believe this dispute to be determinative of liability in this action.

1 Defendant Lansky. *See Avid Telecom LLC, et al. v. Frankel, et al.*, No. 4:22-cv-00558 (D.
2 Ariz. 2022).

3 Plaintiffs' Position: Defendants Lansky and Avid Telecom—both plaintiffs in that
4 proceeding—requested that the matter be voluntarily dismissed. On January 12, 2024, the
5 Clerk entered an order dismissing the matter with prejudice. Plaintiffs bring this closed
6 matter to the Court's attention as certain pleadings, evidence or fact witnesses may be
7 relevant in this action.

8 Defendants' Position: Due to the crippling economic effects of the public filing of
9 the instant Complaint, which has forced Avid Telecom out of business, Defendants Lansky
10 and Avid Telecom—both plaintiffs in that proceeding—lacked the financial resources to
11 pursue that litigation and, thus, requested that the matter be voluntarily dismissed, which
12 was effectuated on January 12, 2024. By that point, Lansky and Avid Telecom successfully
13 defeated two separate motions to dismiss, and the case was proceeding to trial. Defendants
14 bring this closed matter to the Court's attention because certain pleadings, evidence or fact
15 witnesses from that litigation may be relevant to this action – specifically, evidence and
16 facts regarding the illegal procurement of certain “evidence” used by the Plaintiffs in this
17 case.

18 10. The parties will exchange their initial Fed. R. Civ. P. 26(a)(1) disclosures and
19 file the Notice of Initial Disclosure by September 13, 2024.

20 11. The parties discussed changes to the limitations on discovery imposed by
21 Fed. R. Civ. P. 26(b)(2) and were not able to reach an agreement. Plaintiffs suggest the
22 changes as set out in Item 12 below.

23 **12. Scope of Discovery**

24 Any discovery requests must be proportional to the needs of the case as required by
25 Fed. R. Civ. P. 26(b)(1). The parties agree to cooperate in good faith during discovery, in
26 the exchange of reports, and the scheduling of necessary depositions.

1 The parties agree that discovery and court filings will be served on any other party
2 via electronic mail to counsel. Except for materials, documents, and information as to
3 which electronic transmission is impracticable, the parties may respond to any discovery
4 request via electronic mail to counsel.

5 The parties do not believe formal phasing of discovery is required in this case and
6 will work together cooperatively to focus discovery on the key issues identified in the
7 Complaint and Answer.

8 Plaintiffs' Position: Discovery topics shall include seeking party, non-party, and
9 expert discovery on all subjects alleged in the Complaint, as well as any defenses and
10 counterclaims. Although the Complaint involves many Plaintiffs, the relevant evidence to
11 prove the federal claims, Counts I through V, will be largely the same evidence from the
12 same sources for all Plaintiffs. This same evidence to prove the federal claims will similarly
13 be largely relied upon to establish the elements of most state claims alleged. Additionally,
14 the investigative, pre-litigation work and resources in this matter was conducted by a small
15 group of the Plaintiff States for the benefit of all Plaintiffs. Moreover, the evidence that
16 has been analyzed to date, and that will be requested and analyzed during discovery, to
17 establish liability and harm to Plaintiffs will be conducted by a limited number of shared
18 expert witnesses who will conduct analyses of the same set of data and evidence to
19 determine violations for all Plaintiffs.

20 Defendants' Position: Discovery topics shall include seeking party, non-party, and
21 expert discovery on all subjects alleged in the Complaint, as well as any defenses and
22 counterclaims. As all Plaintiffs are party to the federal law claims, Defendant shall have
23 the right to propound discovery on all Plaintiffs, not just those in lead group or those
24 Plaintiffs which offered specific state law claims. Notwithstanding any common or similar
25 claims made by the Plaintiffs, any limits on the scope of discovery (*e.g.*, the number of
26 interrogatories or document requests) shall be applied on a party-by-party basis such that
27 Defendants shall each be entitled to propound separate discovery to the permitted limit on
28 each Plaintiff.

1 *Limitations on Discovery:* The parties discussed modifications to the limitations on
2 discovery set forth in the Federal Rules of Civil Procedure and were unable to reach an
3 agreement.

4 Plaintiffs' Position: Due to the fact that the relevant evidence to prove Plaintiffs
5 federal claims and many state claims is largely the same, the Plaintiff's propose the
6 following modifications:

7 Interrogatories limitations are modified to 50 per side.

8 Requests for admission are modified to 50 per side.

9 The parties may seek additional discovery limitations or extensions through later
10 stipulation of the parties or motion to the Court as necessary.

11 *Depositions:* The parties discussed but could not reach an agreement as to the
12 limitation on the number of depositions.

13 The Plaintiffs propose the following modifications: 50 depositions per side.

14 The parties agree that depositions are not to extend beyond seven (7) hours
15 in one day, unless by agreement of the parties.

16 Defendants' Position: The issue of proportionality must be considered in light of
17 the specific circumstances of his case. Defendants are two individuals and a sole
18 proprietorship, representing only two-party fact witnesses. Defendants are required to rebut
19 allegations brought by forty-nine (49) Attorneys General, and specific allegations and
20 claims by eleven (11) States. Each of those States will presumably have one or more
21 witness(es) to support their factual allegations. The Complaint also reference(s) dozens of
22 other persons and organizations with alleged knowledge, from whom Plaintiffs have
23 apparently gathered facts and documents. These include various Attorneys General,
24 numerous persons who worked (both directly and indirectly) for the (USTelecom) Industry
25 Traceback Group, and numerous persons who work for the various other carriers that are
26 referenced in the Complaint and/or in the related litigation styled *Avid Telecom LLC, et al.*
27 *v. Frankel, et al.*, No. 4:22-cv-00558 (D. Ariz. 2022). On information and belief, Plaintiffs
28 also received data from other third parties, some of which have not been disclosed.

1 Fairness dictates that, due to the number of Plaintiffs and the number of persons from whom
2 the Plaintiffs have obtained “evidence,” Defendants will likely need to take many more
3 depositions than Plaintiffs just to obtain the information that the Plaintiffs already have,
4 and that is necessary to understand the existence or absence of any factual basis for the
5 Plaintiffs’ claims. The same is true for other categories of discovery (*e.g.*, interrogatories
6 and document requests).

7 The Plaintiffs elected to make this a nationwide lawsuit, brought by forty-nine (49)
8 Attorneys General. They did so to maximize the public scale of the Complaint, its crushing
9 economic impact, and the difficulty to Defendants in mounting a comprehensive defense.
10 In this context, “proportionality” requires that the number of depositions be calculated “per
11 party” and not “per side.” Limiting the three humble Defendants to the number of
12 depositions sought by the forty-nine Plaintiffs would be fundamentally unfair and
13 materially prejudicial.

14 Interrogatories limitations are modified to 50 *per party*.

15 Requests for admission are modified to 50 *per party*.

16 Document Requests: No present limit. Any limit calculated on a per party
17 basis.

18 The parties may seek additional discovery limitations or extensions through later
19 stipulation of the parties or motion to the Court as necessary.

20 *Depositions:* The parties discussed but could not reach an agreement as to
21 the limitation on the number of depositions.

22 Plaintiff proposal for fifty (50) depositions per side would mean that
23 Defendants would only get one deposition per Plaintiff, while Plaintiffs
24 would get more than sixteen depositions per Defendant. That imbalance is
25 facially unfair. It is also prejudicial, as Defendants plainly need to take
26 multiple depositions of at least the eleven State Plaintiffs asserting specific
27 claims. To address this imbalance and to ensure that Defendants are treated
28 fairly and have the opportunity for full and complete discovery, the

Defendants propose the following modifications:

Plaintiffs: A total of thirty (30) depositions (*i.e.*, one for each Defendant, plus 27 more).

Defendants: A total of seventy-five (75) depositions (*i.e.*, one for each Plaintiff, plus 25 more).

The parties agree that depositions are not to extend beyond seven (7) hours in any one day but may exceed one day either by agreement of the parties or order of the Court. Given the extraordinary scale of the “evidence” referenced in the Complaint that Plaintiffs have secured over years of investigation, Defendants expect they will require more than seven (7) hours in one day for many of their depositions.

13. The parties intend to request the production of electronically stored information (ESI). The parties will identify the method and form of production for any electronically stored information in connection with their individual discovery requests as set forth in Fed. R. Civ. P. 33 and 34. The parties shall meet and confer regarding any specific ESI needs and disputes before seeking involvement of the Court and will submit an ESI plan to the Court’s for review and approval on or before September 13, 2024.

14. The parties shall submit a proposed protective order setting forth procedures governing assertions of privilege or other applicable protection from disclosure for the Court’s review on or before September 13, 2024. The parties agree to confer prior to bringing any attorney-client privilege, work product, or other discovery issues or disputes to the Court.

15. The parties propose the following case schedule:

- a. Initial disclosures required by Fed. R. Civ. P. 26(a)(1): September 13, 2024.
- b. Addition of parties or amending complaint by May 1, 2025;
- c. Discovery Completed by January 21, 2026;
 - The parties believe that, due to the voluminous facts and the complexity of the legal issues in the case, including the significant

1 number of witnesses, more than 180 days will be needed for
2 discovery.

3 d. Disclosure of initial expert testimony and rebuttal expert testimony
4 pursuant to Fed. R. Civ. P. 26(a)(2):

- 5 • Disclosure of initial expert testimony: June 20, 2025
- 6 • Rebuttal Expert Testimony: 5 months later: November 20,
7 2025

8 The parties agree rebuttal expert testimony to be completed
9 5 months after the disclosure of initial expert testimony for
10 no more than 3 experts. In the event that either party submits
11 initial expert testimony beyond 3 experts, additional time for
12 the filing of rebuttal expert reports will be negotiated in good
13 faith by the parties.

14 e. Disclosure of witness list: 21 days prior to trial

15 f. Filing dispositive motions: 60 days after the close of discovery:
16 March 23, 2026

17 g. Filing pre-trial statements: 30 days before trial

18 h. Filing of settlement status report: 21 days after the end of discovery:
19 February 11, 2026

20 16. Plaintiffs and Defendants each anticipate requiring evidentiary hearings,
21 such as a hearing to exclude unqualified expert or scientific evidence under the *Daubert*
22 standard, to be held sometime after expert reports are exchanged. Plaintiffs and Defendants
23 may also request evidentiary hearings concerning the admissibility of consumer complaints
24 as well as statements from other third parties under the residual exception of the hearsay
25 rule pursuant to Fed. R. Evid. 807 and of summaries prepared pursuant to Fed. R. Evid.
26 1006. Defendants also expect to request one or more evidentiary hearings regarding the
27 admissibility of evidence.

1 17. The parties anticipate being prepared for trial within 21 to 22 months of filing
2 this Report. The Plaintiffs anticipate needing 25 trial days. If the parties can agree to
3 stipulate to the authenticity of records produced by record custodians, the Plaintiffs believe
4 the estimated length of the trial can be shortened to 10 to 15 days. Each party reserves the
5 right to seek an extension of the trial date based on the progress of discovery, including the
6 cooperation of third-party witnesses.

7 18. The Plaintiffs have requested a jury trial. Defendants object to a jury trial
8 and request the case be heard by the judge alone.

9 19. The parties engaged in settlement discussions after the Complaint was filed
10 but were unable to reach an agreement. The parties have agreed to resume settlement
11 discussions after the Case Management Conference. The parties do not feel it would be
12 productive at this time to have a settlement conference with the Court but will keep the
13 Court informed if the Court could help in the future.

14 20. The parties believe the case presents unusual, difficult, or complex factors
15 which warrant the highly technical subject matter of this case being placed on the complex
16 track for case management purposes pursuant to LRCiv 16.

17 21. Other than what was set out in Item 17 above, the parties do not have any
18 suggestions for shortening or simplifying the case.

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22 *The remainder of this page is intentionally left blank.*
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1 RESPECTFULLY SUBMITTED this 15th day of August, 2024.

2
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